IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on : July 30th, 2007
Date of decision : August 16th, 2007

\+ CRL.REV.P. 855/2006

SHRI GHASI RAM ..... Petitioner
Through Mr. Rahesh Anand, Mr. Abhey Kumar, Mr. Ved Prakash, Mr. Rajesh K. Singh, Mr. Ankur Saigal and Mr. Rishi Kesh Kumar, Advocates

versus

NCT OF DELHI & ANR ..... Respondent
Through Mr. Sandeep Sethi, Sr. Advocate with Mr. Sanjay Kumar Singh, Advocate for R-2
Mr. Pawan Sharma, APP, for R-1

CORAM:
Mr. Justice S. Ravindra Bhat

1. Whether reporters of local papers may be allowed to see the judgment.? yes
2. To be referred to the Reporter or not? yes
3. Whether the judgment should be reported in the Digest? yes

Mr. Justice S. Ravindra Bhat

1. The petitioner was complainant before the Additional Sessions Judge (hereafter "trial court"). His revision is directed against the order dated 11-10-2006, whereby the ADJ discharged the accused, respondents of the offences punishable under Section 3 (1) (x) and (xv)of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereafter referred to as "the Act").

2. The petitioner had alleged that he works as an Engineer in the Press Trust of India (PTI). On 1-4-2004, at about 2:30 PM, when he was coming out of the Messenger room, the accused, who saw him coming out, stopped and abused him; he also allegedly used threatening language. The accused respondent No. 2, also an employee of PTI reported the petitioner and said *" Dedh Chamar, apni aukat me rahe, dekhta hun tu ab kaise Delhi mein rehta hai"*. It was alleged that two other staff members, Ghana Nand Joshi and Satyan Singh Negi who were also present tried to stop the accused, but he did not stop; he

further threatened the petitioner that if he failed to resign as Joint Secretary, he would be transferred from Delhi. He allegedly said "*Kutte Ko Kutta Nahin to Haathi Kahenge"*. He allegedly held out further threats.

3. The petitioner's complaint was entertained; the trial court issued the summoning order. After considering the evidence and materials on record, the court made the impugned order. It noticed the judgment of this court, in *Daya Bhatnagar & Ors. V. State 109 (2004) DLT 915*, and reasoned that the evidence led in this case showed that the allegations levelled against the petitioner was in the view of Ghana Nand Joshi and Satyan Singh Negi, who are staff members in the same office. According to the court, those witnesses cannot be termed independent and impartial as they are related to the complainant (petitioner) as working in the same office.

4. The complaint was initially referred to the police, which was of the view that no offence was made out. Later, the petitioner and the alleged eyewitnesses deposed before the court; as a result, the court issued summons. The evidence led supported the version that the incident alleged, took place on 1-4-2004.

5. Counsel for the petitioner submitted that the complaint and materials before the court contained revealed clear allegations of the accused having committed the offences. It was submitted that as to whether the words were uttered in public view or within not were a matter of trial and that *prima facie* the statement of the complainant and other witnesses disclosed that the incident took place in public view, in an office. Therefore, the decision cited by the trial ocurt was inapplicable. It was contended that the complainant had no commercial dealings with the witnesses nor was he in any manner linked with them.

6. Counsel also submitted that having regard to the overall circumstances of the case, and particularly, when the summons were issued after recording evidence, charges should have been framed. The court should not have on an assumed and contrived interpretation that the witnesses who deposed could not be said to have been members of the public, refrained from charging the accused.

7. Mr. Sandeep Sethi, learned senior counsel urged by placing reliance upon the judgment of this Court in *Daya Bhatnagar & Ors. V. State 109 (2004) DLT 915* that even if the allegations were accepted as truth, they did not constitute the offence complained against, as the acts were not done in “public view”. In that judgment the Court had held that the expression “public view” contemplated presence of independent and impartial persons not having any commercial, business or family relationship with complainant/informant and that would also exclude persons having any previous enmity for falsely implicating the accused. Learned counsel further relied upon the judgment reported as *Shrimati Usha Chopra V. State 115 (2004) DLT 91* and the judgment in *Ram Nath Sachdev V. Government of NCT 93 (2001) DLT 741.*

7. Learned counsel further submitted that even otherwise the basic ingredients of the offences were not made out. It was submitted that if charges are to be framed on the basis of such flimsy materials, innocent persons would be put to great harassment and prejudice. Therefore, the court acted within jurisdiction, in refusing to frame charges.

8. The relevant provisions of the Act are as follows:

> *" 3. Punishments for offences of atrocities-*
> *(1)Whoever, not being a member of a Scheduled Caste or Scheduled Tribe-*
> *(i)to (ix) xxxxxxxxxx*
> *(x) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or Scheduled Tribe in any place within public view:"*

9. The Supreme Court, while dealing with Section 18 of the Act,In ***State Of M.P. And Another, Appellants V. Ram Kishna Balothi***-(101)-CRLJ -2076 (SC), noticed the Statement of Objects and Reasons accompanying the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Bill, 1989, when introduced in Parliament. It set out the circumstances surrounding the enactment and the evil which the statute sought to remedy. These noted that despite measures to improve the socio-economic conditions of the Scheduled Castes and the Scheduled Tribes, they remain vulnerable; they were denied number of civil rights, and subjected to various offences, indignities, humiliations and

harassment. They were, in brutal incidents, deprived of their life and property. It also observed that serious crimes are committed against them for various historical, social and economic reasons. The statement had further noted that there was an increase in the trend of commission of different kinds of atrocities which called for special legislation to check and deter crimes against persons belonging to SC/ST communities by non-Scheduled Castes and non-Scheduled Tribes.

10. In *Daya Bhatnagar and Ors.* there was divergence in the views as to what constitutes "public view"; the matter was referred to Mr. Justice S.K. Agarwal. He concurred with the view of Mr. Justice B.A. Khan that the expression 'public view' in Section 3(1)(x) of the Act implies within view of a group of people of the place/locality/village as distinct from a few persons, who are private and are akin to strangers, not linked with the complainant through any kinship through business, commercial or any other vested interest; and who are not participating members with him in any way. It was also held that the accused must have knowledge or awareness that the victim belongs to Scheduled Caste or Scheduled Tribe community and if an accused does not know that the person whom he is insulting, intimidating or humiliating is a member of a Scheduled Caste or Scheduled Tribe, no offence under the Section would be constituted. The offending expressions, therefore, should be uttered by the persons accused, in view of others unconnected with the complainant. Interestingly, Mr. Justice Agarwal held that merely because a witness, who is otherwise neutral or impartial and who happens to be present, by itself cannot be disqualified.

11. The question is whether the facts of this case justify the impugned order that no charges could be framed. *Daya Bhatnagar* is no doubt an authority as to what constitutes "public view". Yet, there cannot be a blind application of the ratio in that case. Here, the complainant had alleged humiliation by the accused. As to whether it was in public view or not is a matter of evidence. There is nothing on record suggestive of commercial, or family relationship of the complainant with the witnesses; indeed it is unknown whether they or any of them work as his subordinates. Besides, the expression used is, significantly enough, "public view" and not "public place". In order to attract the offence, the act should have been done by accused in any place within the public view and it is not necessary that such place should be a public place. It can be even in a place which is not a public place, but which would be within the public view. Parliament evidently kept this significant distinction in mind.

12. In my view, the opinion formed by the trial court that charges ought not to be

framed is premised on an unduly narrow interpretation of *Daya Bhatnagar's* judgment. At the stage of pre-charge evidence, there was nothing on record to show that the two witnesses had such close nexus or proximity with the complainant to be ruled out of the expression "public view". Mere employment in the same office does not disqualify co-employees from deposing about the veracity or otherwise of alleged incidents which constitute offences under the Act.

13. In view of the above discussion, I am of the opinion that the impugned order, so far as it relates to the offence under Section 3 (1) (x), requires to be set aside. As far as the offence under Section 3 (1) (xv) is concerned, there is no materials to warrant framing of charge for that offence.

14. The petition deserves to be partly allowed; the trial court shall proceed to frame the charge under Section 3(1) (x) in terms of findings in the preceding paragraph, and complete the trial in accordance with law. The petition is allowed partly, in the above terms; no costs.

(S. RAVINDRA BHAT)

16th August, 2007 JUDGE